

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #9	CCRB Case #: 201702920	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/01/2017 12:15 PM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 8/1/2018	EO SOL 8/1/2018	
Date/Time CV Reported Sat, 04/15/2017 12:02 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 04/15/2017 12:02 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Duvaughn Clacken	190	941564	105 PCT
2. POM Nicholas Reulbach	10428	940624	105 PCT
3. POF Lisa Ruoff	21723	947593	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Heather Busch	27077	948311	105 PCT
2. POF Kristen Santoro	24895	942533	105 PCT
3. POM Christophe Makastchian	08386	960852	105 PCT
4. LT Ralph Clement	00000	938238	C O S U
5. POM Daniel McGovern	01135	931820	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Duvaughn Clacken	Force: Sergeant Duvaughn Clacken struck § 87(2)(b) with a blunt instrument.	§ 87(2)(b)
B.SGT Duvaughn Clacken	Force: Sergeant Duvaughn Clacken used a Taser against § 87(2)(b)	§ 87(2)(b)
C.SGT Duvaughn Clacken	Abuse: Sergeant Duvaughn Clacken threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On April 15, 2017, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On February 1, 2017, at approximately 12:15 p.m., police were called to § 87(2)(b) in Queens, because § 87(2)(b) a resident of this facility, was behaving in a violent manner. An unidentified staff member opened the door to § 87(2)(b)'s apartment (Apt. 210) for the officers with a master key. Sgt. Duvaughn Clacken of the 105<sup>th</sup> Precinct entered § 87(2)(b)'s bedroom as § 87(2)(b) was in his bed attempting to sleep. Immediately upon entering the room, Sgt. Clacken allegedly struck the right side of § 87(2)(b)'s skull with his Taser twice in rapid succession (**Allegation A**). Sgt. Clacken ordered § 87(2)(b) to go to the hallway of the residence and he complied. § 87(2)(b) allegedly asked the officers to allow him to put on a pair of pants because his loose-fitting shorts were falling down, and he was allegedly holding them up at the waist with his hands. Sgt. Clacken fired his Taser darts, which struck § 87(2)(b) in his right thigh (**Allegation B**). § 87(2)(b) fell to the floor, and Sgt. Clacken allegedly continued to Tase him while he was on the floor (**Allegation B cont'd**). § 87(2)(b) was then handcuffed and escorted out of the building. As he was walking § 87(2)(b) to an ambulance, Sgt. Clacken allegedly told § 87(2)(b) that he would make sure the Taser hurt more next time (**Allegation C**). § 87(2)(b) was transported via ambulance to § 87(2)(b), where the Taser darts were surgically removed. § 87(2)(b) was not arrested or summonsed.

There is no video footage in this case.

### Mediation, Civil and Criminal Histories

- Due to § 87(2)(b)'s forcible removal to a hospital, this case has been deemed ineligible for mediation.
- As of June 27, 2017, § 87(2)(b) has not filed a notice of claim in regards to this incident (Board Review 01).
- § 87(2)(b);§§ 86(1)(3)(4);§ 87(2)(c)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) is involved (Board Review 03).
- Sgt. Duvaughn Clacken has been a member of the NYPD for 10 years and is the subject of one prior CCRB complaint involving once allegation with no substantiated allegations. § 87(2)(c)

### Potential Issues

- § 87(2)(b) a former director § 87(2)(b), stated that § 87(2)(b)'s case manager, § 87(2)(b) and the facility's cook counselor, § 87(2)(b) retrieved the master key from the front desk and escorted the officers upstairs to § 87(2)(b)'s residence. § 87(2)(b) stated that she remained at the front desk and that § 87(2)(b) and the assistant director, § 87(2)(b) were upstairs with the officers. § 87(2)(b) declined to provide a statement to the CCRB, and § 87(2)(b) had no recollection of the incident. As such, no statement was obtained from any staff member who was at § 87(2)(b)'s residence with the officers.

## Findings and Recommendations

### Allegations Not Pleaded

- Seeing as officers were called to § 87(2)(b) to have § 87(2)(b) psychiatrically evaluated, and staff members granted the officers entry into § 87(2)(b)'s apartment, no Abuse: Premises Entered allegation is pleaded against any officer.

### Allegation A – Force: Sergeant Duvaughn Clacken struck § 87(2)(b) with a blunt instrument.

§ 87(2)(b) alleged that as he was lying in his bed, Sgt. Clacken entered his bedroom and immediately struck him with his Taser twice in rapid succession on the right side of his skull without saying anything to him beforehand. § 87(2)(b) believed he sustained blood clots in his head from the Taser strikes, but these blood clots were not medically diagnosed and he did not receive any treatment for them.

§ 87(2)(b)'s medical records do not document any complaints he made about having been struck in the head, nor are there indications of any injuries, bruises, or signs of blunt trauma to his head.

Sgt. Clacken stated that § 87(2)(b) was lying in bed when he entered the bedroom, that he told § 87(2)(b) that he needed to go to a hospital, and that § 87(2)(b) was initially compliant and got out of bed. He stated that his Taser was in his holster when he entered the bedroom and that he did not draw his Taser until he prepared to use it on § 87(2)(b) in the hallway. Sgt. Clacken denied striking § 87(2)(b) in the head with his Taser.

PO Lisa Ruoff stated that § 87(2)(b) opened his door for the officers and was standing when he answered the door, and that § 87(2)(b) was not ever in his bed or lying down. PO Ruoff stated that Sgt. Clacken did not strike § 87(2)(b) in his head with his Taser.

PO Heather Busch did not recall what § 87(2)(b) was doing when the officers arrived at his room. She believed § 87(2)(b) was in his bedroom when the officers arrived, but she noted that he may have entered the bedroom in the officers' presence. PO Busch did not recall § 87(2)(b) sleeping or laying in his bed. PO Busch entered § 87(2)(b)'s room, but she did not recall whether any other officers were inside the room with her. PO Busch did not know whether she was the first officer to enter the bedroom or whether Sgt. Clacken entered the bedroom at all. PO Busch did not see when Sgt. Clacken first drew his Taser, nor did she see Sgt. Clacken strike § 87(2)(b) in his head with his Taser.

PO Nicholas Reulbach stated that he knocked on § 87(2)(b)'s door and § 87(2)(b) told him to “go the fuck away.” PO Reulbach knocked again, turned the knob, and opened the door, and § 87(2)(b) was lying in his bed under a blanket and sat upright in the bed as soon as he opened the door. The officers told § 87(2)(b) to stand up and exit the bedroom and he complied. PO Reulbach had no recollection of Sgt. Clacken entering the bedroom and stated that Sgt. Clacken did not strike § 87(2)(b) in his skull with his Taser.

§ 87(2)(g)

**Allegation B – Force: Sergeant Duvaughn Clacken used a Taser against § 87(2)(b)**

§ 87(2)(b) stated that as he exited the bedroom into the hallway of the apartment, he held his loose-fitting cargo shorts up by the waist because he was not wearing a belt, and he asked the officers if he could change into a proper pair of pants and a belt because he did not want his shorts to fall down, and Sgt. Clacken said no and that they needed to leave. PO Reulbach and PO Busch each held one of § 87(2)(b)'s arms as he faced the wall to the right of his door, and they were about to handcuff him. § 87(2)(b) told them to wait because his pants were going to fall. PO Reulbach and PO Busch did not give § 87(2)(b) any commands and did not move his arms. § 87(2)(b) asked the officers to hold his pants up, believing that he was going to be handcuffed. § 87(2)(b) said he was not going to resist and again stated his desire to put on a proper pair of pants. § 87(2)(b) was “upset” because Sgt. Clacken had allegedly struck him with the Taser, but he did not recall whether he was raising his voice, and he noted that he was not using profanities. Sgt. Clacken said he was going to Tase § 87(2)(b) and told him to move. PO Reulbach and PO Busch released § 87(2)(b)'s arms and backed away from him. § 87(2)(b) turned towards Sgt. Clacken, raised his hands above his head, and said, “No, don’t Tase me,” and his shorts fell down when he released his grip on the waistband. Immediately after § 87(2)(b) turned and raised his hands, Sgt. Clacken fired his Taser prongs into § 87(2)(b)'s right thigh through his boxer shorts. At the time, Sgt. Clacken was standing by § 87(2)(b)'s door, fewer than seven to eight feet away from § 87(2)(b). § 87(2)(b) remained standing for “a minute” § 87(2)(b) did not know exactly how long) while he was being Tased, but he decided to get on the floor to show the officers that he was not resisting. Sgt. Clacken allegedly continued to Tase § 87(2)(b) while he was on the floor. Sgt. Clacken Tased § 87(2)(b) for “a minute,” and then § 87(2)(b) was handcuffed. § 87(2)(b) denied offering physical resistance at any point. In his telephone statement, § 87(2)(b) stated that he lifted his pants from the floor immediately prior to Sgt. Clacken Tasing him.

§ 87(2)(b) and § 87(2)(b) were not present in § 87(2)(b)'s apartment with the officers. § 87(2)(b) was not sure what had taken place in § 87(2)(b)'s apartment, but she heard § 87(2)(b) complain that he had been Tased and stated that § 87(2)(b) continued to scream until he was placed in an ambulance. § 87(2)(b) stated that she heard that § 87(2)(b) refused to exit his bedroom and that she saw § 87(2)(b) attempt to pull away from the officers while he was in handcuffs and stated that § 87(2)(b) was cursing.

In § 87(2)(b)'s progress notes from § 87(2)(b) (Privileged Documents 01), both § 87(2)(b) and § 87(2)(b) indicated that § 87(2)(b) was agitated and had been punching walls prior to the officers’ arrival and was a possible threat to himself and others. In the facility’s desk log (Privileged Documents 01), § 87(2)(b) wrote, “Resident was non-compliant with going to the hospital. Resident was Tasered by officers and was escorted out of the facility in a restraint.”

Sgt. Clacken stated that as soon as § 87(2)(b) arrived at his doorway of his bedroom, he became very combative and aggressive, and he began to offer violent resistance. As officers (Sgt. Clacken did not recall which) were holding § 87(2)(b)'s arms, § 87(2)(b) pushed the officers with his hands, but Sgt. Clacken did not recall which officers he pushed, where § 87(2)(b) was standing at the time, where on their bodies these officers were pushed, or how many times they were pushed. The officers attempted to handcuff § 87(2)(b) but he refused to be handcuffed. As the officers, including PO Reulbach and Sgt. Clacken, attempted to bring § 87(2)(b)'s arms behind his back and handcuff him, § 87(2)(b) swung his arms, twisted his body, and pushed the officers. Sgt. Clacken ordered § 87(2)(b) to place his hands behind his back, but he did not recall how many

times he issued this command. Additional officers issued commands to § 87(2)(b) but Sgt. Clacken did not recall which officers or what commands. § 87(2)(b) did not indicate that he was going to comply. Approximately two to three minutes after § 87(2)(b) began offering physical resistance, Sgt. Clacken decided to use his Taser on § 87(2)(b) because he believed this was the only way to overcome § 87(2)(b)'s aggression. In an effort to get § 87(2)(b) to comply, Sgt. Clacken pointed his Taser at § 87(2)(b)'s midsection and told him that he was going to be Tased if he did not comply, but § 87(2)(b) continued to behave aggressively by pushing and “wrestling” with the officers, including PO Reulbach, who § 87(2)(b) pushed into a wall. Sgt. Clacken warned § 87(2)(b) once or twice that he was going to Tase him, and § 87(2)(b) indicated that he heard him. Sgt. Clacken did not recall exactly what § 87(2)(b) said in response, but he noted that § 87(2)(b) indicated that he did not care. Approximately 20 to 30 seconds after drawing his Taser, Sgt. Clacken deployed the Taser darts while he stood two to three feet away from § 87(2)(b) striking § 87(2)(b) in his thigh. Sgt. Clacken utilized either one or two five-second Tase cycles. Between the two cycles, the officers attempted to get § 87(2)(b)'s hands behind his back. Sgt. Clacken did not recall whether the first Tase cycle successfully subdued § 87(2)(b) was handcuffed immediately after being Tased.

In a Threat, Resistance, and Injury Report (Board Review 05), Sgt. Clacken wrote, “EDP was acting combative and refusing to be handcuffed. CEW was used to prevent EDP from harming himself and others. EDP sustained minor laceration to right leg from CEW prongs.” In the report, Sgt. Clacken indicated that § 87(2)(b) was “wrestling/grappling” and “pushing/shoving” the officers, that he deployed the darts from two feet away, and that the Taser was effective. The report was reviewed by Lt. Ralph Clement, who was present at the scene and determined that Sgt. Clacken's actions were appropriate.

PO Busch's, PO Ruoff's, and PO Reulbach's statements were generally consistent with Sgt. Clacken's, albeit more detailed. PO Ruoff stated that § 87(2)(b) exited the bedroom with his fists clenched, raised, and squared off as if he was ready to fight, but she noted that he did not swing at the officers. PO Busch stated that she and other officers ordered § 87(2)(b) numerous times to turn around, place his arms behind his back, and allow the officers to handcuff him, and § 87(2)(b) refused to comply and replied, “No, fuck you. I'm not doing what you want.” PO Busch, PO Ruoff, and PO Reulbach each said that they attempted to grab § 87(2)(b)'s arms, and PO Busch and PO Reulbach said that they had been shoved by § 87(2)(b). PO Busch stated that § 87(2)(b) locked his hands together in front of his body and placed the front of his body against a wall in order to avoid being handcuffed; PO Reulbach noted that § 87(2)(b)'s hands were locked and down the front of his pants while he was against the wall. PO Busch and PO Reulbach attempted to separate § 87(2)(b)'s hands and remove them from the front of his body, but they were unsuccessful. Each officer stated that § 87(2)(b) did not indicate that he was going to comply, surrender, or end his resistance before he was Tased. PO Reulbach was the only officer interviewed who recalled § 87(2)(b) mentioning his loose-fitting pants or belt, and he stated that the officers refused to allow him to bring his belt to the hospital because the buckle had spikes and could have been used as a weapon.

Patrol Guide Procedure 211-08 (Board Review 06) states, “A [Conducted Electrical Weapon] should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.”

Although § 87(2)(b) denied offering any active physical resistance, the accounts of the staff at § 87(2)(b) indicate that § 87(2)(b) behaved in a violent manner both before the officers' arrival and after he had been handcuffed by punching walls, yelling and cursing, and pulling away from the officers after he was handcuffed. § 87(2)(b)'s progress notes explicitly state that the staff at § 87(2)(b) considered him to be a possible threat to himself and to others. Although the scale of § 87(2)(b)'s physical resistance in the hallway remains in dispute, § 87(2)(b) acknowledged that he initially refused to be taken to a hospital when the officers indicated that they were ready to leave § 87(2)(b). In addition, § 87(2)(b)'s, PO Reulbach's, and PO Busch's statements were consistent in that § 87(2)(b) was facing a wall with his hands in front of his body and grasping an object (either each other or his waistband) while PO Reulbach and PO Busch grabbed his arms and attempted to place him in handcuffs. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation C – Abuse of Authority: Sergeant Duvaughn Clacken threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that as Sgt. Clacken escorted him out of the building and towards an ambulance, he asked him if the Taser hurt, and in response, he told Sgt. Clacken that it tickled. Sgt. Clacken then allegedly told § 87(2)(b) that he would make sure the Taser hurt more next time. § 87(2)(b) stated in his CCRB interview that he smokes marijuana and synthetic marijuana, but did not smoke any on the date of the incident. § 87(2)(b) also stated that he regularly hears voices from outside the building calling his name and threatening him, and he noted that he heard these voices on the incident date prior to the officers' arrival.

§ 87(2)(b) stated that when a § 87(2)(b) resident is escorted to an ambulance, she usually exits the building to see if anything else happens with the resident and to find out where the resident is being taken. § 87(2)(b) did not hear any officer tell § 87(2)(b) that he would make sure the Taser hurt more next time, but she noted that Sgt. Clacken was aggressive towards § 87(2)(b) and usually has a "stern" presence when he responds to § 87(2)(b). § 87(2)(b) who remained at the front desk, could not hear anything once § 87(2)(b) exited the building.

§ 87(2)(b)'s medical records from § 87(2)(b) (Privileged Documents 02) indicate that § 87(2)(b) reported experiencing chronic auditory hallucinations. They also indicate that he reported smoking K2, a strain of synthetic marijuana, on the day prior to the incident date. § 87(2)(b)'s progress notes from § 87(2)(b) (Privileged Documents 01) also indicate that § 87(2)(b) frequently smokes K2.

Sgt. Clacken stated that he did not ask § 87(2)(b) if the Taser hurt, and that he did not tell § 87(2)(b) that he would make sure that the Taser hurt more next time. PO Ruoff stated that she did not hear Sgt. Clacken make this statement, and PO Busch stated that she did not recall Sgt. Clacken making this statement. PO Reulbach stated that Sgt. Clacken did not tell § 87(2)(b) that he would make sure the Taser hurt more next time.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]  
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Squad: 9

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
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